

**REQUEST FOR MODIFICATION OF CERTAIN ZONING ORDINANCE,
SUBDIVISION ORDINANCE AND DESIGN STANDARDS MANUAL
REQUIREMENTS**

Freedom Place

REZONING: REZNO5-LE-001
RA to Planned Residential Development ("PRD") and
Rural Residential ("RR-2")

Property: 338.34 acres more or less; Geographic Parcel Identification
Number (G.P.I.N.) 6899-18-3742; 6899-07-7716 and 6889-
89-6214 in the Lee Magisterial District, with a 219.64+/-
acre area to be rezoned further identified as GPINs 6899-
18-3742; 6899-07-7716 and 6889-89-6214 (a portion)
(collectively, the "Property").

Applicant: Centex Homes

Record Owners: Jean Elizabeth Cheatham, Estate of Robert H. Hodgson,
James F. Steffey, William W. Goulding, and Gary W.
Weaver

Project Name: Freedom Place

Magisterial District: Lee

Date: 07/13/04: Checklist Review
01/14/05: Second Submission
08/08/05: Third Submission
12/16/05: Fourth Submission
01/26/06: Fifth Submission
02/03/06: Sixth Submission
_____ : Seventh Submission

I. INTRODUCTION

In accordance with § 4-112 of the Fauquier County Zoning Ordinance ("Zoning Ordinance"), Centex Homes (the "Applicant") requests the following modifications of certain sections of the Zoning Ordinance, the Fauquier County Subdivision Ordinance ("Subdivision Ordinance") and the Fauquier County Design Standards Manual ("Design Standards Manual" or "DSM") as a part of this Application. In order for the Applicant to develop Freedom Place pursuant to the Conceptual Development Plan ("CDP") included as a part of this rezoning, the following modifications are required.

II. MODIFICATION REQUEST

Pursuant to Sections 12-609, 12-610, and 12-702(1) of the Zoning Ordinance, all site plans must comply with Chapter 2 of the Design Standards Manual. See Appendix A, attached hereto. In addition, Sections 9-5(A) (16) and (28) of the Subdivision Ordinance require compliance with the Fauquier County Stormwater Management Ordinance, which has recently been incorporated into the new Design Standards Manual. See Appendix A, attached hereto.

In order to meet the Fauquier County Comprehensive Plan's planning requirements for the Bealeton Service District, which are directly applicable to this Property, the Applicant hereby requests the following modifications to the Design Standards Manual to accommodate the unique conditions that are found on the Freedom Place site. The provisions of these modifications and the justifications provided thereto have been crafted in such a way as to insure that the purpose and intent of the County's regulations are met and satisfied to an equivalent degree during the development of the Property subject to this rezoning. These modifications are merely providing flexibility in the provision of stormwater management for the subject property in order to accomplish the Comprehensive Plan's goals and the combined vision for Freedom Place. For the purposes of this Application, and no other, the following modifications are requested and shall be deemed to apply to all future development at Freedom Place:

Design Standards Manual

Section 202. Definitions.

"Channel" means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

"Natural Drainage/Channel" means any natural or existing channel, stream bed, or watercourse that carries surface or groundwater, but is not wholly dependent for its flow on surface drainage from its immediate area or from outfalls of man-made systems designed to handle stormwater runoff such as culverts, storm drain pipes, roadway drainage ditches or other manmade channels. It further includes nontidal waterways that are part of the natural topography that usually maintains a continuous or seasonal flow during the year, and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural.

"Watercourse" except as a natural drainage/channel is otherwise defined above, means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

"Body of Water" means any significant natural pool of water with a normal water surface elevation, such as an ocean, a lake, a pond, or a stream.

“Streambed” means any natural or man-made channel in which a perennial or intermittent stream flows.

“Outfall” means the lower end of a watercourse; the open end of a drain, culvert, etc. where the discharge occurs.

Section 201.8. General Drainage Requirements

- (2) Natural drainage/channel characteristics and drainage divides shall be preserved to the maximum extent practicable, provided that for purposes of REZNO5-LE-001 natural drainage/channel associated with the site shall be deemed to include only those areas identified on Exhibit A, attached hereto. Drainage analyses shall be considered within each drainage area.
- (9) In subdivisions, all SWM/BMP facilities shall be placed in a common area unless prior approval has been obtained from the program administrator. Further, proposed or natural drainage/channel shall not occur across or upon individual lots unless prior approval has been obtained from the program administrator; and provided further that the Applicant shall be permitted to propose suitable means of accommodating surface and subsurface drainage in order to avoid any requirement that it be required to eliminate or relocate proposed residential lots on the Property subject to this rezoning.

III. JUSTIFICATION

A. Legal Justification

No Fauquier County Ordinance defines a “natural drainage /channel,” and there are a number of approaches to drainage channels that are acceptable in standard industry practice. The Applicant has based its proposed definition on prevailing definitions used in the industry, and the use of those terms found in the Virginia Administrative Code, specifically 4VAC 50-30-10, which provides definitions applicable to the Virginia Erosion and Sedimentation Control Act. The close relationship of that Act to the issues involved here make the definitions in the state regulations of significant use.

Sansom v. Board of Supervisors, 257 Va. 589, 594-95, 514 S.E.2d 345 (1999) provides that “[w]hen . . . a statute contains no express definition of a term, the general rule of statutory construction is to infer the legislature's intent from the plain meaning of the language used.” *Hubbard v. Henrico Ltd. Partnership*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998) (citing *City of Virginia Beach v. Flippen*, 251 Va. 358, 362, 467 S.E.2d 471, 473-74 (1996); *Marsh v. City of Richmond*, 234 Va. 4, 11, 360 S.E.2d 163, 167 (1987)). An undefined term must be “given its ordinary meaning, given the context in which it is used.” *Dep't of Taxation v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980). “The context may be examined by considering the

other language used in the statute.” *City of Virginia Beach v. Bd. of Supervisors of Mecklenburg County*, 246 Va. 233, 236 -37, 435 S.E.2d 382, 384 (1993).

Although the Appendix to the DSM contains a definition that arguably applies to a natural channel, it does not apply in this case because it is part of Technical Bulletin Number 1 developed by the Virginia Dept of Conservation and Recreation and was designed to address outfalls from a developed site. That definition is insufficiently precise concerning the particulars of this Application because it was not intended to be used for this purpose. Thus, it is prudent in these circumstances to define essential terms clearly, so that there will not be disagreement in the future as to the intent of the language employed.

In the judgment of the Applicant’s engineers, the only natural drainage/channel on site is Bowers Run. Attached hereto and incorporated herein by reference is a depiction of the existing natural drainage/channel, entitled “Natural Drainage/Channel Exhibit” prepared by Bowman Consulting Group and dated March 2006. The Bowers Run watercourse is defined as a special flood hazard area designated Zone A on the effective FIRM, by FEMA. Bowers Run has a defined bed and bank system with a normal water surface elevation and thus qualifies as a channel, streambed and watercourse. It is not wholly dependent on surface flows from the immediate area or the outfall of man-made stormwater runoff collection systems for flows, and as such qualifies as a natural drainage/channel.

As opposed to the conditions described above for Bowers Run, those drainage areas served by an outfall for man-made roadway ditches or culverts, are not natural drainage/channels. Further, a drainage area that has no defined bed and bank system, is not identified as a permanent or intermittent stream and is not a body of water with a normal water surface elevation is neither a channel, streambed or watercourse and, as such, is not a natural drainage/channel. Finally, a drainage area with flows that are wholly dependent on surface flows from the immediate area is not a natural drainage/channel.

B. Equivalent Alternative Proposed by the Applicant

The Applicant proposes to address the conveyance of surface water present on the site using standard engineering practices in conformity with Federal, State and Local regulations. The Applicant agrees to implement the following construction measures in order to comply with the County’s Ordinances and Regulations to an equivalent degree (the “Engineering Solution”). These measures are designed to ensure public safety and the protection of future homeowners from damage which could be caused by a 100-year storm event.

1. The County’s Ordinances require overland relief for the 10-year storm event. The Applicant will provide overland relief onsite such that no habitable structures will be inundated by surface flows generated by the 100-year storm event.

2. Construction within the 100-year floodplain of Bowers Run will be limited to trail and road crossings, and utility installation. All required state and federal permits will be obtained prior to the start of construction. The Applicant reserves the right to plant within the 100-year flood plain of Bowers Run.
3. Drainage systems are customarily designed for the 10-year storm event, but the Applicant will design its system to handle 25-year storm flows in order to avoid overland flow in the event of such a storm.
4. The Applicant shall provide an enhanced extended detention facility, in lieu of extended detention otherwise required.
5. Residential lots will be located outside the 100-year floodplain for Bowers Run.
6. Stormwater runoff generated offsite that enters the site will be conveyed through the site pursuant to section 4-7 of the subdivision ordinance, with easements placed over any channels or storm drain pipe systems engineered to handle said flows.
7. Single Family Attached homes will be slab-on-grade with no basements.
8. Single Family Detached homes with basements shall be designed with subsurface drainage measures designed and certified by a geotechnical engineer licensed by the state of Virginia. See the proposed additional proffer, below.
9. Stormwater management ponds will be located outside the 100 year floodplain for Bowers Run.

The Engineering Solution described above will be incorporated into all site and subdivision plans to be submitted to the County following the approval of this rezoning. The employment of the Engineering Solution will be a correction of the existing problematic erosive flow present on the site, and a distribution of the stormwater entering onto the Property in compliance with applicable County and State regulations.

Finally, in response to the County's concerns regarding high water tables in areas where homes with basements are proposed on the Applicant's Development Plan, the Applicant is proposing a proffer that directly discusses this issue, similar to that contained in other recently approved rezoning applications.

"The Applicant will construct homes within the PRD district that will include basements, subject to the following conditions:

1. No below grade basements shall be constructed on soils with high water tables, unless the building foundation drainage system of the structure is designed by licensed professional engineers to assure a dry basement and the site is graded so as to preclude standing water in yards and limit the recirculation of pumped or collected water, and approved by the County.

2. Drainage easements, where required, shall be indicated on the final subdivision plat.
3. The deeds conveying each unit with a basement shall include the following language:

This house has been constructed on property that has been determined to possess a potentially high subsurface water table. A foundation drainage system for this home has been designed and constructed according to standard engineering practices. The property owner is advised that any disturbance or alteration of this foundation drainage system may result in excess water in the yard or basement of the home, and that any such disturbance is undertaken at the sole risk of the property owner. The owner is advised to consult with a certified civil or geotechnical engineer prior to undertaking any land disturbance activity, which means any activity that changes the volume, velocity, or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity that bares soil or rock or involves the diversion or piping of any natural or man-made watercourse that may affect the foundation drainage system.”

IV. CONCLUSION

Based on the foregoing, the Applicant hereby requests that the Planning Commission and Board of Supervisors approve the requested modifications to Sections 12-609, 12-610 and 12-702(1) of the Zoning Ordinance, Sections 9-5(A)(16) and (28) of the Subdivision Ordinance and Sections 201.8 and 202 of the Design Standards Manual.

APPENDIX A

Applicable Zoning and Subdivision Ordinance Provisions

The following provisions of the Zoning and Subdivision Ordinances are applicable to the provision of stormwater management for Freedom Place and the modification requested herein. The Applicant is not requesting any modification to these provisions, they are being provided as an Appendix hereto for reference purposes only.

Zoning Ordinance

Section 12-609 - Easements

Adequate easement shall be provided and recorded prior to site plan release, as set forth in the most current version of Chapter 2 of the Design Standards Manual. Where multiple structures or pipes are installed, the edge of the easement shall be five (5) feet clear of the outside pipes. Where easements do not follow the established lot lines, the nearest edge of any easement shall be a minimum of five (5) feet from any building.

Section 12-610 - Drainage

Adequate drainage for the disposition of storm and natural waters both on and off-site shall be provided. The extent and nature of both on-site and off-site treatment including on-site stormwater retention, where deemed appropriate and necessary, are to be determined by the developer in conference with the Director and other agencies, as applicable, and in accordance with the most current version of Chapter 11 of the County Code and Chapter 2 of the Design Standards

Section 12-702 - Administration Review of Drainage and Erosion and Sediment Control Plans

1. Preliminary and final review of drainage and erosion and sediment control plan shall be in conformance with Chapter 2 of the Design Standards Manual.

Subdivision Ordinance

Section 9-5 Preliminary Plan Requirements

The following shall be included with the submission of a preliminary subdivision plan, revision, or resubdivision for consideration by the Planning Commission unless waived or modified by the Agent. The Agent may waive or modify any of these submission requirements upon request by the applicant and upon a finding by the Agent that the item waived is not needed for the specific application or that the modification serves the purpose of this Ordinance to at least an equivalent degree.

- A) A preliminary plat shall be prepared on one or more sheets not exceeding 24" x 36" in size. The plan shall be prepared at a scale not greater than one (1) inch to one hundred (100) feet. Such plans shall be prepared, signed in black ink and sealed (on each sheet) by a person or firm licensed in Virginia to prepare such plans. Where more than one sheet is required, a composite plan at a scale of not

less than one (1) inch to three hundred (300) feet shall be submitted. The plat(s) shall contain the following:

* * *

16) Preliminary plans indicating the provision/layout for all utilities, including but not limited to, water supply, sewage disposal, BMP's, and stormwater management facilities as outlined in the Fauquier County Stormwater Management Ordinance. (Amended by the Board of Supervisors September 16, 2002.)

* * *

28) Location of any existing or proposed bridges. Location of any proposed major culverts, SWM and BMP facilities as outlined in the Fauquier County Stormwater Management Ordinance. (Amended by the Board of Supervisors September 16, 2002.)

Section 9-13(B) - Additional Design and Performance Standards

Adverse environmental impact of the development should be minimal. The criteria for determination is as follows:

* * *

- 2) Lack of adequate drainage excessive environmental impact with respect to drainage, shall be deemed to exist if surface or subsurface water retention and/or runoff is such that it constitutes a danger to the structural security of proposed dwelling units or other on-site structures.

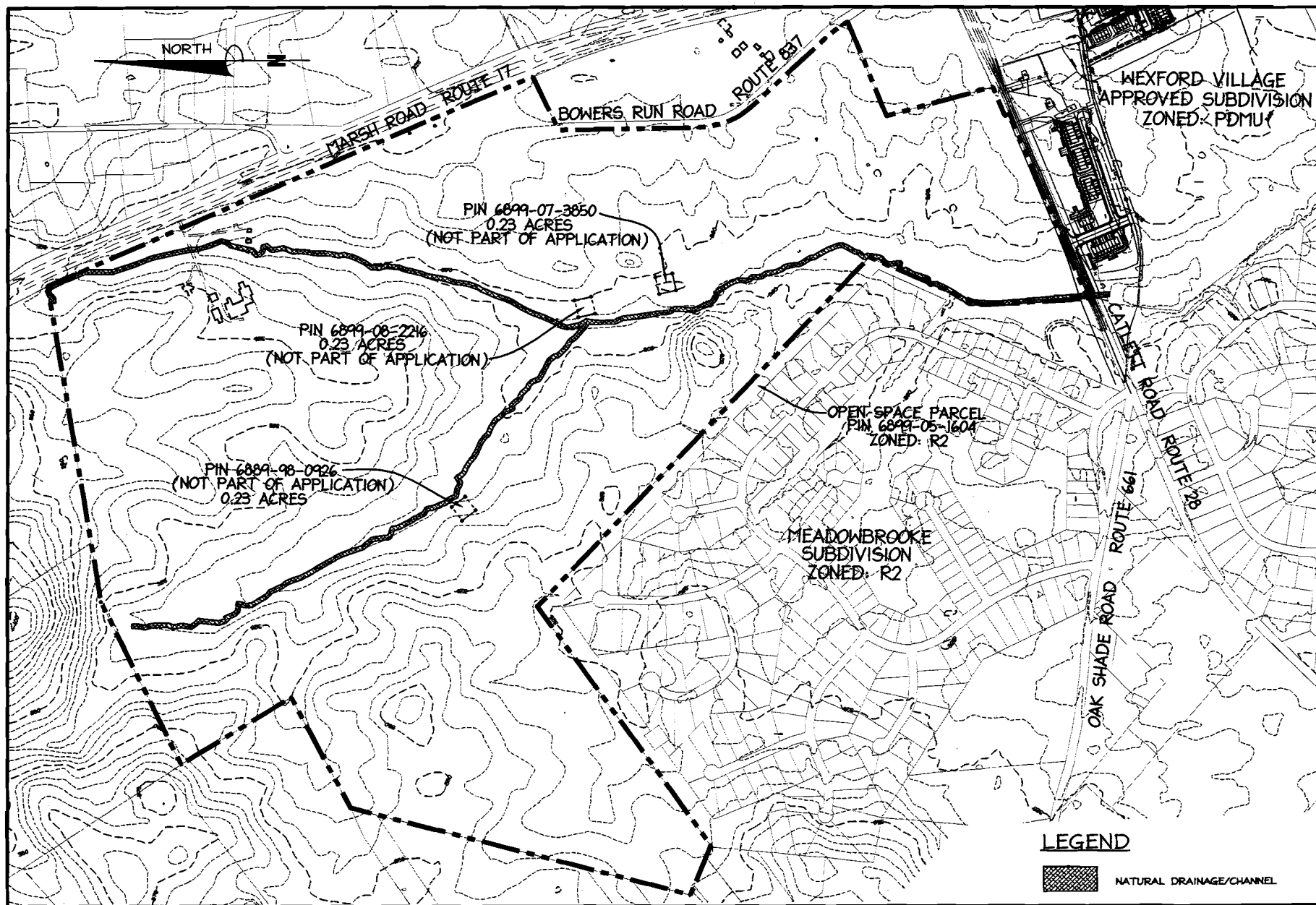
In addition, inadequate drainage shall be deemed to exist where proposed site grading and development creates harmful or damaging effects from erosion and siltation on downhill and/or downstream land and no adequate remedy is provided. Recommendations are to be requested from the John Marshall Soil and Water Conservation District based on the evaluation of submitted Sedimentation and Erosion Control Plan.

- 3) Layout and Design - The development should be designed so as to provide a quality environment for residents by minimizing its adverse impact. General considerations for minimal impact are as follows:

- (1) Road and street layout should utilize topography so that unnecessary cuts and fills are avoided.

* * *

- (5) All major streams and rivers, especially those upon which flood control, water impoundment, and recreation facilities are located or planned, should be left in the natural state where adequate or improved to provide for the maintenance of water quality standards.



Bowman
CONSULTING

NATURAL DRAINAGE/CHANNEL EXHIBIT
FREEDOM PLACE
FAUQUIER COUNTY, VIRGINIA

MARCH 2006
NOT TO SCALE

1 of 1